PERWIRA AFFIN BANK BHD

v.

NASARUDDIN ABDUL JALIL

HIGH COURT MALAYA, SHAH ALAM
CHIN FOOK YEN J
[CIVIL SUIT NO: 22-391-97]
17 NOVEMBER 1998

CIVIL PROCEDURE: *Affidavits - Order 14 application - Whether affidavits -in-support irregular - Whether jurat should follow substantive averment on same page of affidavit*

The plaintiff applied for summary judgment under O. 14 r. 1 of the Rules of the High Court 1980 ('RHC') against the defendant and filed two affidavits in support, namely, encl. 4 and encl. 6. The defendant raised a preliminary objection submitting that the jurat of each of the affidavits was irregular and therefore inadmissible. The Senior Assistant Registrar upheld the objection and rejected the affidavits and accordingly dismissed the application for summary judgment in the absence of the said affidavits. Hence, the instant appeal.

The defendant alleged that the jurat of an affidavit should not begin and end on a fresh page but rather should immediately follow the last substantive averment of the deposition. It was further alleged that the jurat in each of the affidavits concerned, began from the last clause and ended on the same page. Also, that the last clauses in both affidavits did not contain any substantive averments.

Held:

[1] There was no requirement in the RHC for a jurat to follow substantive averment on the same page. If a deponent not only admits to having signed the affidavit with the completion of the jurat but also admits the contents of the affidavit as his own, it will be futile for anyone else to dispute otherwise, particularly as such admission is to his own detriment.

[1a] In a situation where a deponent disputes and challenges as to the contents of an affidavit as his own whilst having signed the affidavit completed with jurat, there is rationale for the statement as expressed in Mallal's *Rules of the High Court 1980* that "the jurat should follow immediately after the end of the deposition. Affidavits should not end at a page and the jurat begins on a following page. There must be sufficient indication that the jurat relates directly to the deposition" as a matter of prudence.

[2] The jurats of the affidavits were regular. Further, the deponent in his subsequent affidavit encl. 6 supported his earlier affidavit encl. 4. The two affidavits being in consonant, it was obvious that the jurats related to the depositions.

[Appeal allowed.]

Case referred to:
Voon Mow Chew v. Menteri Dalam Negeri & Anor [1993] 4 CLJ 198 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 14, O. 14 r. 1

Other source referred to:
Rules of The High Court 1980, Mallal, p 478

For the plaintiff - Elaine Ong; M/s Shook Lin & Bok
For the defendant - Steven Pung; M/s Ishariah Ho, Chong & Menon

Reported by Usha Thiagarajah

JUDGMENT

Chin Fook Yen J:

In this suit, the plaintiff filed a summons-in-chamber dated 10 December 1997 for summary judgment under O. 14 r. 1 of the Rules of the High Court 1980 ('the Rules') against the defendant. The plaintiff also filed two affidavits in support thereof, being encl. 4 and encl. 6. At the hearing on 11 March 1998 counsel for the defendant, in raising his preliminary objection, submitted that the jurat of each of the affidavits was irregular and therefore the

affidavits were inadmissible. The Senior Assistant Registrar upheld the objection raised and rejected the affidavits and in the absence of the affidavit evidence in support, accordingly dismissed the application under O. 14 of the Rules. Hence the appeal.

Counsel for the defendant repeated the same argument before me. He submitted that the jurat of the affidavit should not begin and end on a fresh page but rather should immediately follow the end of a substantive or spill-over of the last substantive averment of the deposition. He then cited the case of *Voon Mow Chew v. Menteri Dalam Negeri & Anor* [1993] 4 CLJ at p. 198, in support of his argument. He continued to explain that the jurat in each of the cases *viz* encl. 4 and encl. 6 began from the last clause of the affidavit and ended on the same page and he contended that the last clause did not contain any substantive averment.

In order to understand readily the argument advanced by defendant's counsel, it is perhaps helpful to reproduce below the page on which the jurat began and ended in each of the affidavits. In encl. 4 at p. 6, the affidavit continued with cl. 17 and followed by the jurat as follows:

page 6

17. Dengan yang demikian, saya dengan hormatnya memohon untuk satu perintah seperti yang dikehendaki dalam permohonan Plaintiff di sini.

DIIKRARKAN di Kuala Lumpur oleh)
TN. HAJI ISMAIL BIN SHAMSUDIN pada) Sd
haribulan 9 DEC 1997)

Dihadapan Saya
Sd
Pesuruhjaya Sumpah Malaysia
No. W023
Dato Ng
Mann Cheong

In encl. 6 at p. 5, the affidavit continued with cl. 14 and followed by the jurat as follows:

page 5

14. Oleh yang demikian, saya menyatakan bahawa Defendan tidak menunjukkan sebarang pembelaan dan saya memohon perintah seperti yang dipohon dalam permohonan Plaintiff di sini.

DIIKRARKAN di Kuala Lumpur oleh)

TN. HAJI ISMAIL BIN SHAMSUDIN tersebut) Sd

pada haribulan 6 JAN 1998)

Dihadapan Saya
Sd
Pesuruhjaya Sumpah Malaysia
No. W023
Dato Ng
Mann Cheong

My first task is to find out whether or not cl. 17 and cl. 14 of encl. 4 and encl. 6 respectively were averments of a substantive nature or spill-over thereof. I have to agree with defendant's counsel that the said clauses were of a formal standard submission or inference and not even an averment, disclosing nothing substantive. But, that is not the end of the matter. What is the legal requirement of what a jurat should be? What have the relevant Rules got to say about it? O. 41 of the Rules provides as follows:

Order 41 – Affidavits

1. (1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) ...

(7) Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person before whom it is sworn.

(8) A jurat must be in one of the forms in Form 78.

No. 78

Forms of Jurat

(Title as in action)

(a) To an affidavit by one deponent ... Sworn (or affirmed) on the ... day of ... 19 ... at (Through the interpretation of ... .)

Before me

...

Commissioner for Oaths

I have read and re-read the relevant rules in the hope to find in the said rules provisions to support the contentions of the defendant. The wordings of the relevant rules are quite clear and straight-forward. The rules are in fact completely silent on the issue contended, and I am of opinion that there is no such requirement for a jurat to follow substantive averment on the same page. On my part, if a deponent not only admits to having signed the affidavit with the completion of the jurat, but also admits the contents of the affidavit as his own, it will be futile for anyone else to dispute otherwise, particularly such admission is to his own detriment. I am prepared to envisage a situation where a deponent disputes and challenges as to the contents of an affidavit as his own, whilst admitting having signed the affidavit completed with jurat. In the context, there is rationale for the statement, as expressed in Mallal's *Rules of The High Court 1980* at p. 478 that "the jurat should follow immediately after the end of the deposition. Affidavits should not end at a page and the jurat begins on a following page. There must be sufficient indication that the jurat relates directly to the deposition" as a matter of prudence.

In the present case, I hold that the jurats of the affidavits are regular. That apart, the deponant in his subsequent affidavit encl. 6 supported his earlier affidavit encl. 4. The two affidavits being in consonant, it is obvious that the jurats related to the depositions.

For the reasons aforesaid the appeal is allowed. The O. 14 application is remitted back to the Senior Assistant Registar for hearing on its merits. Costs in the cause.